(6) 11

IN THE HIGH COURT OF JUDICATURE AT BILASPUR: CHHATTISGARH

W.P. NO. ~~409~~ 411 OF 2002

Petitioners

1. Deepak Ramawat, S/o Shri R.N..Ramawat, aged about 38 Years, Foreman Incharge, South Eastern Coalfields Ltd. Bhatgaon Area, Distt.Surguja Chhattisgarh.

2. G.K.Mohan, S/oShriG.Surva Rao, aged about 37 years, Foreman Incharge Gevra Area

P. R. No. 408
Presented by Shri ... Adv.
dated ... 9/12/02

3. Rajeev Avasthi, S/o Shri P.K.Avasthi, aged about 36 years, Foreman Incharge, Gevra Area

4. K.Srinivas, S/o K.Sheshadri Aged about 36 years, Foreman Incharge, Gevra Area.

5. Vijay Sharma S/o G.L. Sharma, aged about 34 years Forman Incharge,Bishrampur

6. Neeraj Saxena S/o J.C. Saxena Aged about 32 years Forman Incharge, Bishrampur

7. Thomas P. S/o T.Pappy Aged about 38 years Foreman Incharge SECL.Chirimiri

8. S.Dhabal S/o S.Dhabal aged about 38 years Foreman Incharge Chirimiri

T.C.

(87)

9. P. Bhattacharya
S/o M.Bhattacharya
Aged about 29 years
Foreman Incharge
Chirimiri

10. K.P. Singh S/o Uttam Singh, aged about 28 years, Foreman Incharge, Chirimiri

11. Shridhar Gouraha
S/o Bhagirathi Gouraha
Aged about 35 years
Foreman Incharge
Baikunthpur Area.

VERSUS

Respondents

1. Chairman,
Coal India Limited
Calcutta.

2. Director(Personnel)
Coal India Ltd.
Calcutta.

3. Chairman Cum Managing Director, SECL,
Bilaspur.

4. General Manager
Executive Establishment
SECL. Bilaspur.

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA FOR ISSUANCE OF ORDERS UNDER WRIT OF MANDAMUS.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 411 of 2002

Petitioners — Deepak Ramawat & others

Versus

Respondents — Chairman, Coal India Limited & others

Post for order on 28th March, 2006.

Sd/-
Satish K. Agnihotri
Judge

(60)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 411 of 2002

Petitioners — Deepak Ramawat & others

Versus

Respondents — Chairman, Coal India Limited & others

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Gautam Bhaduri, counsel for the petitioners.

Shri Praveen Das, counsel for the respondents.

ORDER

(28th March, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The present petition filed under Article 226/227 of the Constitution of India seeks a direction against the respondents that the petitioners be considered for promotion from the non-executive to executive cadre along with employees of the other departmental organizations. It is further stated that the respondents be directed to comply with their policy of promotion from the E-1 to E-5 Executive Cadre. Alternatively, the petitioners be granted higher pay scale.

2. The facts in nutshell are that the petitioners were working as Foreman (technical and supervision of Grade-B) with the respondent-Company - South Eastern Coal Fields Ltd. in the departments of electronic and telecom, known as electronic Trade. The petitioners are entitled to promotion from Grade-A i.e. non-executive cadre to the executive cadre as per the policy (Annexure P/1) which is applicable to the employees of the other departments

and the petitioners being members of technical and supervision departments have no promotional avenues to the post of the executive cadre when the employees working in other departments are entitled to the promotion to the executive cadre.

3. Shri Gautam Bhaduri, learned counsel appearing for the petitioners submits that as there was no avenue for promotion from the post of foreman in the electronic trade to the higher rank i.e. executive cadre, the petitioners and other similarly situated officers made representation to the Respondent No.1. The Respondent No.1 having considered all the aspects decided to give promotion to the diploma holders employees in the electronic trade at par with the Excavation and Mining diploma holders by circular dated 18.12.1997 (Annexure P/2). Learned counsel further submits that despite the policy decision dated 18.7.1997 not a single employee belonging to the electronic trade working as foreman (technical and supervision of Grade-A) in electronic trade has been considered and promoted to the higher cadre so far.

4. Shri Praveen Das, learned counsel appearing for the respondents submitted that the respondents have clearly stated in their written affidavits as under:-

> "It is submitted that all the eligible candidates are considered for their departmental promotion to the executive cadre post through an internal circular which are issued by the respondent no.1 depending upon availability of vacancies. As already submitted in earlier paragraphes, CIL had resorted to such selection process for considering the candidature of eligible departmental candidates of Foreman-Incharge (E & T) to the Executive Cadre Post in E-1/E-2 Gr. And 12 no. of candidates were promoted against such internal circulars after observing all procedural formalities."

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And further, that :-

> "Respondent no.1 is not in a position to consider the promotion of non-executive to the executive cadre post as there is no vacancy available."

5. Having heard learned counsel for both the parties and having perused the records, it is apparent that the circular dated 18.12.1997 (Annexure P/2) is applicable to the petitioners also as they are working as foreman (technical and supervision) in electronic trade. Learned counsel for the respondents has clearly admitted that as and when vacancy arises, the case of the petitioners would be considered for promotion to the higher post at par with the excavation and mining diploma holders. It is well settled principle of law that the Court cannot direct to create posts and promote the employees/officers directly to the higher posts. However, a direction can be issued to the respondents for consideration of the cases of the petitioners, when admittedly the circular dated 18th December, 1997 also provides for promotion of the electronic diploma holders at par with the excavation and mining diploma holders.

6. It is well settled that the promotion being a condition of service and having regard to the requirement thereof it is expected that the employer should have followed the principles as laid down by the Supreme Court in the case of **State of Tripura and others Vs. K. K. Roy** (2004 AIR SCW 1) which reads as under:-

> "6. .....Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the Appellant should have followed the said principle."

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7. In the present case there is no dispute that the respondents is a State within the meaning of Article 12 of the Constitution of India and the respondents have already considered this aspect while issuing circular dated 18.12.1997 (Annexure P/2).

8. For the above-stated reasons, the petition is allowed and the respondents are directed to consider the cases of the petitioners in accordance with the circular dated 18.12.1997(Annexure P/2) issued by the Respondent No.1 for promotion to the executive cadre in accordance with law, subject to availability of posts. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur